

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

10:30 AM

8:14-13513 Nadine A Mariotti

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

CAPITAL ONE AUTO FINANCE
Vs.
DEBTOR

Docket 108

Tentative Ruling:

Grant unless APO. Appearance is optional.

Party Information

Debtor(s):

Nadine A Mariotti

Represented By
Caroline S Kim

Movant(s):

Capital One Auto Finance

Represented By
Marian Garza
Timothy J Silverman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, February 02, 2016

Hearing Room

5B

10:30 AM

8:15-13421 Robert Chan

Chapter 13

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

DAIMLER TRUST
Vs
DEBTOR

Docket 25

*** VACATED *** REASON: OFF CALENDAR; SETTLED BY
STIPULATION FOR ADEQUATE PROTECTION. ORDER ENTERED
1/20/2016

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Chan

Represented By
Parisa Fishback

Movant(s):

Daimler Trust

Represented By
John H Kim
Jennifer H Wang
Sheryl K Ith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

10:30 AM

8:12-20807 Steven Carl Mish and Karen Ann Mish

Chapter 13

**#3.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 1-5-16)**

NATIONSTAR MORTGAGE LLC
Vs.
DEBTORS

Docket 40

***** VACATED *** REASON: CONTINUED TO 3-01-16 AT 10:30 A.M.
PER ORDER ENTERED 2-1-16**

Tentative Ruling:

Tentative for 2/2/16:
Grant. Appearance is optional.

Tentative for 1/5/16:
No post-petition defaults under the plan or under the loan contract are
permissible or excusable. If the parties cannot reconcile payment history or
there is any post-confirmation default, grant.

Party Information

Debtor(s):

Steven Carl Mish

Represented By
Joseph A Weber

Joint Debtor(s):

Karen Ann Mish

Represented By
Joseph A Weber

Movant(s):

Nationstar Mortgage, LLC.

Represented By
Michael Daniels
Darlene C Vigil

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

10:30 AM

CONT... Steven Carl Mish and Karen Ann Mish

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

10:30 AM

8:13-10802 Charles John Lanham and Paula C Lanham

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

WILMINGTON SAVINGS FUND SOCIETY, FSB
Vs
DEBTORS

Docket 57

Tentative Ruling:

Grant. "Cause" arises when plan payments are missed. If there are indeed seven payments missed, grant.

Party Information

Debtor(s):

Charles John Lanham

Represented By
Bruce A Boice

Joint Debtor(s):

Paula C Lanham

Represented By
Bruce A Boice

Movant(s):

Wilmington Savings Fund Society,

Represented By
Michelle R Ghidotti

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

10:30 AM

8:14-11418 Michael Dudley Brookhyser

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 1-5-16)

HSBC BANK USA
Vs.
DEBTOR

Docket 45

***** VACATED *** REASON: OFF CALENDAR; SETTLED BY
STIPULATION FOR ADEQUATE PROTECTION; ORDER ENTERED
1/7/16**

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Michael Dudley Brookhyser

Represented By
Krystina T Tran

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

8:15-14571 Bobby J Hamby

Chapter 7

#6.00 Amended Motion for Order Confirming That (i) A Debt Deemed to be Nondischargeable in a Previous Bankruptcy Case is Res Judicata in the Instant Case and (ii) The Automatic Stay is not in Effect as to Debtor and Property so as to Allow Continuation of Collection Proceedings.

Docket 31

Tentative Ruling:

Grant.

Party Information

Debtor(s):

Bobby J Hamby

Represented By
James D. Hornbuckle

Movant(s):

Harold A Sykes

Represented By
Pamela KleinKauf

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

8:13-11658 Brian Alan Michael Horowitz and Tammy Jean Horowitz

Chapter 7

#7.00 Debtor's Motion for Damages for Violation of the Automatic Stay and for Contempt and Damages for Violation of the Post Discharge Injunction

Docket 99

Tentative Ruling:

This is Debtor's Motion for Damages for Violation of the Automatic Stay and for Contempt and Damages for Violation of the Post-discharge Injunction based on creditors Zhaosheng and Yishun Chen ("Chens") continued litigation of a state court action against Debtor post-petition and post-discharge.

Disposition of this motion turns on several issues:

1. Notice: In order to obtain damages based on a violation of the stay §362(k) requires that the violation be "willful". Of course, this requires a showing that the alleged violator knew of the bankruptcy and the stay. Similarly, violations of the discharge injunction are treated as contempt, and contempt of an order can only arise where the violator knew of the order but chose to violate it. The Chens argue that they did not timely know of the bankruptcy and point to the fact that they were not separately included in the debtors' schedules and so would not have separately received a notice from the clerk's office of the pending case. While all of this might be true, it does not resolve the question of legal notice. Parties are charged with imputed notice of what their counsel knows. *In re Bruel*, 533 B.R. 782, 789 (Bankr. C.D. Cal. 2015); *In re Price*, 79 B.R. 888 (9th Cir BAP 1987). There seems to be no dispute that Mr. William L. Niu, the Chens' state court lawyer of record, was timely informed of the pendency of the bankruptcy case. He is separately listed on the schedules in his role as counsel of record for Everyday Sports, Inc., plaintiff in the state court action, and the creditor mailing list shows a mailing February 22, 2013 to him. Moreover, Mr. Niu acknowledged receipt of notice by filing a Notice of Bankruptcy Stay in the state court action. Further, as explained below, this notice was sufficient and timely so as to remove any application of §523(a)(3)(B) which might

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

CONT... Brian Alan Michael Horowitz and Tammy Jean Horowitz

Chapter 7

have made the debt nondischargeable.

2. Dischargeability: The Chens seem to argue that damages for violation of either the stay or the discharge injunction are inapplicable because the claim in the underlying action was based on fraud which could be characterized as §523(a)(2) fraud, citing *In re Diaz*, 647 F. 3d 1073, 1088 (11th Cir. 2011) and *In re Lakhany*, 538 B.R. 555, (9th Cir. BAP 2015). But this is incorrect and those cases are largely inapplicable as they refer to debts *already determined to be nondischargeable or nondischargeable as a matter of law* as of the date of discharge. The approach in bankruptcy is that for §§523(a)(2),(4) and (6) claims a creditor is given a short limitations period under FRBP 4007 within which to file his action to determine dischargeability, and failure to do so results in the claims being held dischargeable by operation of law and therefore part of the discharge injunction. *C&W Asset Acquisitions LLC v. Feagins (In re Feagins)*, 439 B.R. 165, 175-76 (Bankr. D. Haw. 2010) citing *In re Lochrie*, 78 B.R. 257, 259 (9th Cir BAP 1987). One exception is if the creditor has no notice in time to file the dischargeability action under §523(a)(3)(B), which was the main issue in *Lakhany*. But as already explained, §523(a)(3)(B) has no application here.

3. Unclean hands and laches defenses: The Chens argue that damages should not be awarded because the debtor waited too long to bring the motion, and/or that, because of the failure to properly list the Chens in the first place, the debtor is guilty of unclean hands. Little or no authority is cited for either proposition and the argument misses the point entirely. The Chens forget that the issue of contempt is between the alleged contemnor *and the court*, so what the debtor may or may not have done is largely beside the point. While the court expects that debtors will timely and completely file schedules that list *all* creditors, it happens too frequently that schedules are incomplete or contain mistakes. It would have been better had the individual plaintiffs in the state court action been separately listed rather than only obliquely as part of the pending state action generally. But this is not and cannot be an excuse for creditors with knowledge of the proceedings such as the Chens to ignore the court's injunction.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

CONT...

Brian Alan Michael Horowitz and Tammy Jean Horowitz

Chapter 7

4. Damages and Apportionment: The Chens argue that actual damages are quite limited since very little activity in the state court action involved the individual defendants and most of what was done is attributable equally to the remaining defendants. The Chens also argue based on some case law that damages should be confined to efforts to enforce and remedy the stay violation. The debtor argues that damages are not so limited, citing *In re H. Granados Comm., Inc.*, 503 B.R. 726, 735 (9th Cir. BAP 2013). Both sides are partially correct. First, this case is mostly about violation of the discharge injunction since it appears little or nothing occurred in the few months that the stay existed before the injunction issued. So, the cases based on violation of the stay are not on point. But even so, there is very little establishing what damages occurred because of violation of the discharge injunction either. Debtor seems to argue that all of his fees and costs incurred in defending the state court action on behalf of the multiple defendants amounting to some \$67,846.97 should be paid for by the Chens. While there is some authority for the proposition that the court has discretion on the issue and apportionment is not strictly required (see e.g. *Sintel Holdings, LLC v. McLean*, 209 Cal. App. 4th 431, 443 (2012), there is little reason or logic given for such an expansive award. Punitive damages are off the table in this case mostly because of two factors: (a). notice is imputed, not actual, and (b). the Chens claim a lack of facility with English. Although this is not determinative for actual damages, it certainly is a factor in judging willfulness and malice for purposes of punitive damages. Although this is about violation of the injunction, not the stay, § 362(k) is also instructive since it limits punitive damages to "appropriate circumstances." See e.g. *In re Wagner*, 87 B.R. 612, 617 (Bankr. C.D. Cal. 1988); *Walls v. Wells Fargo Bank N.A.* 276 F. 3d 502, 507 (9th Cir. 2002). Further, the only attorney's fees directly attributable to the violation (as opposed to other issues in the litigation which may or may not have anything to do with the individual debtors), was the portion of fees spent post discharge in reopening and pursuing the motion. While the records offered supporting this amount are somewhat vague and could have offered more particularity, they appear to be sufficient for this purpose.

Grant, award \$10,310 in general damages attributable to attorneys fees.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

CONT... Brian Alan Michael Horowitz and Tammy Jean Horowitz

Chapter 7

Debtor(s):

Brian Alan Michael Horowitz

Represented By
Brendan Loper
Thomas A Voge

Joint Debtor(s):

Tammy Jean Horowitz

Represented By
Brendan Loper

Movant(s):

Brian Alan Michael Horowitz

Represented By
Brendan Loper
Thomas A Voge

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

8:13-11658 Brian Alan Michael Horowitz and Tammy Jean Horowitz

Chapter 7

#8.00 Omitted Creditors Zhaosheng Chen and Yishun Chen's Motion to Lift Discharge Injunction and Set New Limitations Period for Filing of a Nondischargeability Complaint Under 11 U.S.C. Section 523(a)(2) and 523(c) or in the Alternative to Allow Continuation of the State Court Fraud Action Against Debtor.

Docket 102

Tentative Ruling:

This is the motion of creditors Zhaosheng and Yishun Chen ("Chens") for an order lifting the discharge injunction which has been in place since the debtor was granted a discharge August 12, 2013. This motion touches on some of the same issues as the debtor's motion for damages discussed at #7 on calendar. For several of the same reasons explained in #7 the motion must be denied. Notice of the bankruptcy was imputed to the Chens via notice to their state court attorney, William Niu. Mr. Niu was attorney of record for the Chens in the so-called "fraud complaint" *Chen v. BAM Brokerage, Inc. et al.* pending in the Los Angeles Superior Court, case no. KC065334. The Chens were not separately listed on the schedules, but the action in which their company, Everyday Sports, Inc., was plaintiff, KC063629, also pending in the Los Angeles Superior Court (and also in which Mr. Niu acted as plaintiff's counsel), was listed. As discussed in #7, not only did Mr. Niu receive notice of the bankruptcy, he actually filed a notice of stay of action on account of the bankruptcy proceedings. Moreover, it is rather clear that Mr. Niu received the notice on or near February 25, 2013, well before the June 3, 2013 deadline for filing of dischargeability actions appearing in Form 9A and imposed under FRBP 4007. The court sees no meaningful distinction between this case and *In re Price*, 79 B.R. 888 (9th Cir BAP 1987). In *Price*, even though the creditor was omitted from the debtor's schedules the creditor was barred from filing a nondischargeability complaint after the Rule 4007 deadline had passed because creditor's counsel had timely notice of the bankruptcy. Nor is this case governed by cases like *In re Diaz*, 647 F. 3d 1073, 1088 (11th Cir. 2011) nor *In re Lakhany*, 538 B.R. 55 (9th Cir BAP 2015). In *Diaz*, the debt in question was nondischargeable as a matter of law (child support), so the discharge

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

CONT...

Brian Alan Michael Horowitz and Tammy Jean Horowitz

Chapter 7

injunction simply did not apply. Similarly, in *Lakheny* the court erred in granting relief of stay because the case was really about the discharge injunction, not the stay, and unnecessary in any event because the plaintiff creditor had no timely notice of the nondischargeability deadline so §523(a)(3) intervened to make the debt not discharged irrespective of the action.

In their Reply the Chens inject a new wrinkle. Now it is claimed *arguendo* that while the above analysis might make the original fraud claim discharged, some of the Chens' claim arises out of post-petition acts of the debtor, to which the discharge would normally not apply. This is because under §727(b) the discharge only operates to discharge from all debts that "arose before the date of the order for relief..." The Chens allege in their First Amended Complaint in *Chen v. BAM Brokerage et al* case no. KC065334 filed 11/18/14, that the debtor made a transfer of certain patent rights to debtor's family members in April of 2014, after the bankruptcy case was filed.. The question here will likely be when this claim "arose" and whether this latest issue of fraudulent transfer was one "fairly contemplated" within the original fraud as alleged in the original complaint in *Chen v. BAM Brokerage, et al*. If so, it *might* still be discharged. But should the issues be sufficiently distinct between initial fraud, as alleged in the original complaint and the post-petition fraudulent conveyance, then maybe not. See *In re Jensen*, 995 F. 2d 925, 930 (9th Cir. 1993) [an environmental case dealing with whether cleanup costs were "fairly contemplated" from original conduct so as to make the costs discharged even though expended after the fact]. Other tests have been formulated such as "conduct test" and "relationship test" to determine whether there is sufficient connectedness between pre-petition and post-petition events so as to extend the discharge to both. See *In re Storek*, 355 B.R. 187, 190 (Bankr. N.D. Cal. 2006). This record is not sufficiently developed for this court to make that determination. Procedurally, "lifting the discharge injunction" as asked here is not the logical remedy in any event. The debt in question was either discharged or it was not, turning on that question of whether or not the two species of fraud are connected such that they "arose" prepetition within the meaning of *Jensen*, *Storek* and similar authority. The preferred remedy is for the First Amended Complaint to continue in Superior Court agasint debtor on the fraudulent conveyance

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

CONT... Brian Alan Michael Horowitz and Tammy Jean Horowitz Chapter 7

issue only, with the parties to make careful findings. The Chens will be given leave to request this court, if necessary, make a future declaratory relief judgment on the timing question and "connectedness" question if not made sufficiently clear in the Superior Court's findings.

Deny but with leave to continue in Superior Court against debtor on narrow issue of fraudulent conveyance

Party Information

Debtor(s):

Brian Alan Michael Horowitz

Represented By
Brendan Loper
Thomas A Vogele

Joint Debtor(s):

Tammy Jean Horowitz

Represented By
Brendan Loper

Movant(s):

Yishun Chen

Represented By
Michael Y Lo

Zhaosheng Chen

Represented By
Michael Y Lo

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

8:13-11658 Brian Alan Michael Horowitz and Tammy Jean Horowitz

Chapter 7

#9.00 Debtor's Motion To Impose Sanctions For Violation Of Automatic Stay And Discharge Injunction And Creditor's Motion For Leave To File Non-Dischargeability Action Under 11 USC §§ 523(A)(2) and 523(C)

Docket 95

***** VACATED *** REASON: OFF CALENDAR - DUPLICATE ENTRY
SEE MATTER #7**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Alan Michael Horowitz

Represented By
Brendan Loper
Thomas A Voge

Joint Debtor(s):

Tammy Jean Horowitz

Represented By
Brendan Loper

Movant(s):

Brian Alan Michael Horowitz

Represented By
Brendan Loper
Thomas A Voge

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

8:15-12823 Bad JuJu Games, Inc.

Chapter 7

#10.00 First Interim Application for Approval of Compensation and Reimbursement of Expenses for the Period: 6/1/2015 to 7/16/2015

Thomas D Georgianna, Attorney for Debtors and Debtors-in-Possession

Fee: \$10,266.00, Expenses: \$27.50.

Docket 54

***** VACATED *** REASON: CONTINUED TO FEBRUARY 9, 2016 AT
11:00 A.M. PER ORDER APPROVING STIPULATION ENTERED 1/15/16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bad JuJu Games, Inc.

Represented By
Thomas D Georgianna

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Peter J Mastan
Claire Wu

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

8:14-15045 Cambridge Contracting Group, Inc.

Chapter 7

#11.00 STATUS CONFERENCE Re: Evaluation of Performance Of The Motion for an Order Requiring Frank "Wayne" Dollarhide to Comply with the Court's Rule 2004 Examination Order
(cont'd from 12-01-15)

Docket 47

Tentative Ruling:

Tentative for 2/2/16:

Status?

Tentative for 12/1/15:

Status? Same tentative.

Tentative for 9/22/15:

See #16.

Prior Tentative:

Creditor Amusement Industry, Inc. ("AII") moves for an order requiring Frank "Wayne" Dollarhide, Debtor's principal, ("Dollarhide") to comply with the Court's Rule 2004 Order. Dollarhide argues he is not obliged to comply because he has filed a personal bankruptcy and/or AII failed to tender witness fees. Neither argument is in the least persuasive.

An individual has only three options in response to a subpoena: (1) produce

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

CONT... Cambridge Contracting Group, Inc.

Chapter 7

documents, (2) serve an objection to the subpoena "before the earlier of the time specified for compliance or fourteen days after the subpoena is served," or (3) move to quash or modify the subpoena. Fed. R. Civ. P. 45(a)(1)(D), (d)(2)(B), and (e)(1). See also LBR 2004-1(f) (placing the burden on the party to be examined to file a motion for a protective order). Fed. R. Civ. P. 45 is made applicable to Bankruptcy rules through FRBP 9016. Fed. R. Civ. P. 45(g) provides that a court "may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it."

On February 11, 2015, this Court entered an order requiring that Dollarhide produce documents at least twenty-one days prior to the Rule 2001 examination. The purpose of the Order was to examine fraudulent conveyances related to Cambridge Contracting Group's bankruptcy. Dollarhide never produced documents pursuant to the Order, neither did he serve an objection fourteen days after the subpoena is served. A non-party's failure to timely make objections to a Rule 45 subpoena *duces tecum* generally requires the court to find that any objection has been waived. *Baker v. Ensign*, No. 11-CV-2060-BAS WVG, 2014 WL 3058323, at *6 (S.D. Cal. July 3, 2014). Dollarhide also did not move to quash or modify the subpoena.

Dollarhide argues that the service of witness fees and mileage is "inextricably related" to the Subpoena. Dollarhide cites Rule 45: "witness fees and mileage allowed by law have to be tendered at the time the subpoena is served." Fed.R.Civ.P. 45. A subpoena not so served is invalid. *CF & I Steel Corp. v. Matsui & Co. USA, Inc.*, 713 F.2d 494, 495 (9th Cir. 1983). Dollarhide thus maintains that *all* duties under the subpoena are invalid and unenforceable due to the defect in the service and the absence of fees.

But this argument fails. Even when courts have denied a request to compel attendance due to the failure to provide witness fees and mileage, "the defect relates only to the request for testimony, it does not invalidate the request for production of documents." *Kwong Mei Lan Mirana v. Battery Tai-Shing Corp.*, No. C 08-80142 MISC.JF RS, 2009 WL 290459, at *1 (N.D. Cal. Feb. 5, 2009) (citing *First City, Texas—Houston, N.A. v. Rafidain Bank*, 197 F.R.D. 250, 255 n. 6 (S.D.N.Y. 2000)).

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

CONT... Cambridge Contracting Group, Inc.

Chapter 7

Moreover, Dollarhide did not serve any objection to the Subpoena either within fourteen days after it was served or even prior to the date for production of documents, which means that he has waived all objections to producing such documents. See F. R. Civ. P. 45(d)(2)(B); *Baker*, 2014 WL 3058323 at *6.

The second objection regarding his personal bankruptcy is similarly unavailing. Rule 2004 examinations are limited to "acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Although the automatic stay provides for a broad stay of "proceeding[s]" against the debtor, this provision has traditionally been interpreted to include only formal legal proceedings against *the debtor*, and not litigation that only collaterally affects the debtor. 3 Collier on Bankruptcy ¶ 362.03[3] (16th ed.2010). The Ninth Circuit confirms this interpretation in *In re Adbox, Inc.*, 225 Fed.Appx. 469, 470 (9th Cir. 2007) ("the automatic stay in personal bankruptcy does not apply to this appeal, because an examination under Rule 2004 pursuant to a corporate bankruptcy is not a 'proceeding' within the meaning of 11 U.S.C. § 362".) citing *Parker v. Bain*, 68 F. 3d 1131, 1135-36 (9th Cir. 1995)); *In re Carlson*, 265 B.R. 346, 348 (Bankr. R.I. 2001) (finding that as a matter of law filing a Rule 2004 motion in a corporate bankruptcy case to examine the majority shareholder does not constitute a stay violation in the majority shareholder's personal bankruptcy case). Accordingly, no violation of an automatic stay occurred or would occur if Dollarhide were compelled to comply with the Rule 2004 Examination Order. Dollarhide admits that he was the primary manager who oversaw Debtor's financial records. The evidence suggests there may have been fraudulent conveyances prior to Debtor's bankruptcy filing. The timing of Dollarhide's filing of personal bankruptcy is also suspicious. Only after Dollarhide was called upon to produce documents did he file for personal bankruptcy. After the Rule 2004 Exam Order was served Mariscal, Debtor's other active principal, has also filed a personal bankruptcy petition, effectively blocking all access to information on Debtor (if the court were to sustain such an argument). Permitting Dollarhide to thus avoid testifying would result in Dollarhide evading discovery of highly relevant and probative information to determine whether fraudulent conveyances occurred. The

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

CONT... **Cambridge Contracting Group, Inc.**
court sees no reason in law or equity to so do.

Chapter 7

Grant

Party Information

Debtor(s):

Cambridge Contracting Group, Inc.

Represented By
Joseph A Weber

Movant(s):

Amusement Industry, Inc.

Represented By
John W Hofsaess

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

8:14-15045 Cambridge Contracting Group, Inc.

Chapter 7

#12.00 STATUS CONFERENCE RE: Motion for an Order Requiring William "Billy" Mariscal to Comply with the Court's Rule 2004 Examination Order (cont'd from 12-01-15)

Docket 50

Tentative Ruling:

Tentative for 2/2/16:
Status?

Tentative for 12/1/15:
Status?

Tentative for 9/22/15:
Grant. See #s 16 and 17.

Prior Tentative:
Grant.

Party Information

Debtor(s):

Cambridge Contracting Group, Inc.

Represented By
Joseph A Weber

Movant(s):

Amusement Industry, Inc.

Represented By
John W Hofsaess

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

CONT... Cambridge Contracting Group, Inc.

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

8:14-15045 Cambridge Contracting Group, Inc.

Chapter 7

#13.00 Order To Show Cause Why Frank "Wayne" Dollarhide Should Not Be Held In
Civil Contempt
(cont'd from 12-01-15)

Docket 0

Tentative Ruling:

Tentative for 2/2/16:
Status?

Tentative for 12/1/15:
Status?

Previous Tentative:
No tentative.

Party Information

Debtor(s):

Cambridge Contracting Group, Inc.

Represented By
Joseph A Weber

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 02, 2016

Hearing Room

5B

11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#14.00 Kenneth Gharib aka Kenneth Garrett aka Khosrow Gharib Rashtabadi and
Freedom Investment Corporation, a Nevada Corporation In Contempt Of This
Court and Imposing Sanctions
(cont'd from 10-27-15)

Docket 0

***** VACATED *** REASON: CONTINUED TO 2-9-16 AT 11:00 PER
ORDER CONTINUING HEARING ON CONTEMPT OF KENNETH
GHARIB AND FREEDOM INVESTMENT CORPORATION ENTERED 1-
28-16**

Tentative Ruling:

No tentative.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders
Andrew B Levin

Trustee(s):

Thomas H Casey (TR)

Represented By
Kathleen J McCarthy
Thomas H Casey
Steve Burnell